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August 16, 2024

By ECF

Hon. Sarah L. Cave, U.S.M.J.
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 1670
New York, NY 10007-1312

Re: McGucken v. Lonely Planet Global, Inc., No. 23 Civ. 4293 (ALC) (SLC), ECF No. 65

Dear Judge Cave:

Our firm represents defendant Lonely Planet Global, Inc. ("Lonely Planet") in the above-referenced matter. We write in response to Your Honor's order, issued on August 12, 2024, which requires that "[b]y Friday, August 23, 2024, the parties shall submit the Declarations for the Court's review." ECF 65. Lonely Planet does so, with context below to help facilitate the Court's review.

I. Court Order

The "Declarations" referred to in ECF No. 65 are those the parties were ordered to exchange at the court's previous discovery hearing, held on July 19, 2024, during which hearing the Court ordered, in part, as follows:

The fact discovery deadline is EXTENDED to August 2, 2024, by which date: a. Defendant shall provide to Plaintiff the information it was ordered to produce in the Order at ECF No. 57 Paragraph 1, as updated through June 10, 2024; and b. Plaintiff shall provide to Defendant a declaration confirming that (1) he has searched the Google Drive, backup hard drives, and laptops (the "Backup Locations") described in the parties' joint letter at ECF No. 60, and (2) he has not located any documents indicating the date on which he became aware that the allegedly infringing photo (the "Photo") was hosted on Shutterstock, and providing the approximate date to the best of his recollection on which he learned the Photo was hosted on Shutterstock.

ECF 63 (the "July 19 Order").



Hon. Sarah L. Cave, U.S.M.J.
 August 16, 2024
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II. Lonely Planet's Declarations

On May 22, 2024, in response to the Court's order on April 25, 2024 (ECF 57), Lonely Planet served its first declaration regarding sales, costs, and revenue related to Lonely Planet's book *USA's Best Trips*, Fourth Edition (the "Book"), a true and correct copy of which is attached hereto as **Exhibit A**.

In response to the Court's July 19 Order, on August 2, 2024, Lonely Planet produced to Plaintiff a second declaration regarding sales, costs, and revenue related to the Book, updated through June 30, 2024, a true and correct copy of which is attached hereto as **Exhibit B**.

III. Plaintiff's Declarations

Attached hereto as **Exhibit C** is the Declaration served on Lonely Planet by Plaintiff in response to the Court's July 19 Order on August 2, 2024. On August 5, 2024, counsel for Lonely Planet emailed Plaintiff's counsel to note that Plaintiff's declaration did not provide "the approximate date...on which [Plaintiff] learned the Photo was hosted on Shutterstock," as ordered by the Court, and requested that Plaintiff amend his declaration accordingly (emphasis added). In response, on August 7, 2024, Plaintiff served on Lonely Planet an Amended Declaration, a true and correct copy of which is attached hereto as **Exhibit D**. To date, Plaintiff has not produced any documents supporting the purported date of discovery in his declaration.

We thank the Court for its consideration of this request.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'EML/kad'.

Eleanor M. Lackman

EML/kad

Encls.

cc: All counsel of record (*via* ECF)

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIOT MCGUCKEN,

Plaintiff,
v.

LONELY PLANET GLOBAL, INC., and
DOES 1-10,

Defendants.

Case No. 23-CV-4293 (ALC)(SLC)

DECLARATION OF DARREN O'CONNELL

I, DARREN O'CONNELL, declare as follows:

1. I am a Guidebook Publisher for LPG Australia Holdings Party Limited, an affiliate of Lonely Planet Global, Inc. ("Lonely Planet"). I submit this declaration in response to the Court Order issued by Hon. Sarah L. Cave, filed as ECF No. 57, *McGucken v. Lonely Planet Global, Inc.*, 1:23-cv-04293-ALC-SLC (S.D.N.Y. Apr. 25, 2024).

2. USA's Best Trips, Fourth Edition, ISBN 9781787017894 (the "Book") was first printed on January 22, 2021 with a publish date of June 1, 2021. The Book was reprinted on December 3, 2021, and completed its print run in February 2022.

3. While in-print, Lonely Planet sold 30,766 copies of the Book.

4. The gross revenues generated from sales of the Book amount to \$212,844.55.

5. The costs attributable to the production and distribution of the Book amount to \$98,143.27.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed in Melbourne, Australia

Dated: May 22, 2024



Darren O'Connell

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIOT MCGUCKEN,

Plaintiff,
v.

LONELY PLANET GLOBAL, INC., and
DOES 1-10,

Defendants.

Case No. 23-CV-4293 (ALC)(SLC)

DECLARATION OF DARREN O'CONNELL

I, DARREN O'CONNELL, declare as follows:

1. I am a Guidebook Publisher for LPG Australia Holdings Party Limited, an affiliate of Lonely Planet Global, Inc. (“Lonely Planet”). I submit this declaration in response to the Court Orders issued by Hon. Sarah L. Cave, filed as ECF Nos. 57 and 63, *McGucken v. Lonely Planet Global, Inc.*, 1:23-cv-04293-ALC-SLC (S.D.N.Y. Apr. 25, 2024).

2. *USA's Best Trips*, Fourth Edition, ISBN 9781787017894 (the “Book”) was first printed on January 22, 2021 with a publish date of June 1, 2021. The Book was reprinted on December 3, 2021, and completed its print run in February 2022.

3. On April 25, 2024, the Court ordered Lonely Planet to provide the following sales and revenue figures, which I provided in a declaration, dated May 22, 2024.

- a. While in-print, Lonely Planet sold 30,766 copies of the Book.
- b. The gross revenues generated from sales of the Book amount to \$212,844.55.
- c. The costs attributable to the production and distribution of the Book amount to \$98,143.27.

4. On July 19, 2024, the Court ordered Lonely Planet to update the foregoing figures through June 10, 2024.

5. Upon publication of the 5th Edition of *USA's Best Trips*, some retailers returned unsold copies of the Book to Lonely Planet at Lonely Planet’s expense.

6. Accounting for such returns, as of June 30, 2024, Lonely Planet sold 30,260 copies of the Book.

7. Accounting for such returns, as of June 30, 2024, the revenues generated from sales of the Book amount to \$206,054.

8. The foregoing sales revenue remitted to Lonely Planet is the sum of \$198,783 from the sale of print books and \$7,272 from the sale of e-books.

9. E-book sales are not reported to Lonely Planet by title, but are reported as a single aggregate of all Lonely Planet e-book sales. Accordingly, using the data available to us to determine an approximate attributable value for the Book from overall e-book sales among the array of titles available, the e-book revenue figure for the Book was determined by calculating the Book's print sales as a percentage of total print sales, and applying that percentage to total e-book sales. The sales of out-of-print e-books drop precipitously once new editions are introduced to the market. Accordingly, the exact revenue received from the e-book version of the Book may be even lower than the figure reported here.

10. The costs attributable to the production and distribution of the Book remain unchanged and amount to \$98,143.27.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed in Melbourne, Australia
Dated: August 1, 2024



 DARREN O'CONNELL

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Elliot McGucken,

Plaintiff,

v.

Lonely Planet USA, LLC; et al,

Defendants.

Case No.: 1:23-cv-04293-ALC-SLC

**DECLARATION OF DR. ELLIOT
MCGUCKEN**

DECLARATION OF DR. ELLIOT MCGUCKEN

I, Dr. Elliot McGucken, hereby declare as follows:

1. I am above eighteen (18) years of age and am competent to give the testimony set forth below. Said testimony is given from my own personal knowledge. I make this declaration in accordance with the Court's discovery order dated July 19, 2024.
2. I have searched the Google Drive, backup hard drives, and laptops described in the parties' joint letter at Docket No. 60.
3. In searching these locations and devices, I have not located any documents indicating the date on which I first became aware that photograph at issue in this action was hosted on Shutterstock.
4. To the best of my knowledge, I first became aware that a group of my photographs were being hosted on Shutterstock in connection with the user "Hane Street" in November of 2020, and to the best of my recollection I confirmed that this group of photographs included the photograph at issue in this case in January of 2021.

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

Executed on August 1, 2024 in Anchorage, Alaska.

By: Elliot McGucken
Dr. Elliot McGucken
Declarant

EXHIBIT D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Elliot McGucken,

Plaintiff,

v.

Lonely Planet USA, LLC; et al,

Defendants.

Case No.: 1:23-cv-04293-ALC-SLC

**DECLARATION OF DR. ELLIOT
MCGUCKEN**

DECLARATION OF DR. ELLIOT MCGUCKEN

I, Dr. Elliot McGucken, hereby declare as follows:

1. I am above eighteen (18) years of age and am competent to give the testimony set forth below. Said testimony is given from my own personal knowledge. I make this declaration in accordance with the Court's discovery order dated July 19, 2024.
2. I have searched the Google Drive, backup hard drives, and laptops described in the parties' joint letter at Docket No. 60.
3. In searching these locations and devices, I have not located any documents indicating the date on which I first became aware that photograph at issue in this action was hosted on Shutterstock.
4. To the best of my knowledge, I first became aware that a group of my photographs were being hosted on Shutterstock in connection with the user "Hane Street" in November of 2020, and to the best of my recollection I confirmed that this group of photographs included the photograph at issue in this case by approximately January 19, 2021.

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

Executed on August 7, 2024 in Helena, Montana.

By: Elliot McGucken
Dr. Elliot McGucken
Declarant